

STATE OF MICHIGAN
COURT OF APPEALS

LESLIE BOLGOS,

UNPUBLISHED

February 25, 2000

Plaintiff-Appellant,

v

No. 211791

Washtenaw Circuit Court

CONTROL GAGING, INC.,

LC No. 97-004169-NZ

Defendant-Appellee.

Before: Markey, P.J., and Murphy and R. B. Burns*, JJ.

PER CURIAM.

Plaintiff Leslie Bolgos appeals as of right from a circuit court order granting summary disposition in favor of defendant Control Gaging, Inc. [hereinafter "CGI"] on plaintiff's claim of gender discrimination. We affirm.

This case involves a claim of gender discrimination resulting from alleged disparate treatment plaintiff received from Joanne Watterson, plaintiff's immediate supervisor for part of the time plaintiff was employed with defendant. Plaintiff alleges that this disparate treatment resulted in her termination.

On August 30, 1993, plaintiff began her employment with defendant as a CAD designer in the mechanical engineering department. On September 30, 1994, plaintiff was promoted within the mechanical engineering department to the position of design engineer. Plaintiff's supervisor was Greg Nolff, at that time manager of both the electrical and mechanical engineering departments. Watterson, who was then working as an assistant to Nolff in the electrical engineering department, soon took on scheduling and limited supervisory responsibilities for engineers in the mechanical engineering department, including plaintiff. According to plaintiff, Watterson began to show bias against her during this time.

In early 1995, CGI appointed both Watterson and Karl Liskow, an engineer at CGI, to act as co-managers of the mechanical engineering department. Both Watterson and Liskow supervised the

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

engineers in the department, which included plaintiff and two males, Bob Stoner and John Nurmikko. According to plaintiff, Watterson's treatment of her worsened at this time and Watterson showed a definite bias toward Stoner and Nurmikko.

Plaintiff alleges that Watterson's discriminatory conduct included (1) speaking to her in a condescending manner; (2) broadcasting mistakes made by plaintiff to other employees; (3) allowing Stoner and Nurmikko personal time off while limiting plaintiff's personal time; (4) disciplining plaintiff differently than Stoner and Nurmikko for condemnable conduct; and (5) moving plaintiff's work station to a different location to accommodate a new male engineer, even though plaintiff had more seniority than Nurmikko and Stoner.

Plaintiff also alleges that Watterson made comments showing her bias against plaintiff as a woman. These comments included: (1) that Watterson called Nurmikko and Stoner "her boys"; (2) that Watterson stated that she did not like plaintiff's voice or body; and (3) that Watterson stated that she moved plaintiff's work station because she wanted the room in which Nurmikko, Stoner and other males worked to be "all men."

Toward the end of plaintiff's employment with defendant, plaintiff began receiving unfavorable reviews and memos concerning her work performance. Plaintiff claims that these reviews resulted from Watterson's dislike for her and from Watterson's intentional plan to have plaintiff terminated.

On February 12, 1997, Watterson again drafted a memo detailing problems with plaintiff's work performance. That morning, while meeting to discuss this memo, plaintiff and Watterson argued about plaintiff's failure to attend a meeting a number of days earlier and plaintiff's failure to complete specific job assignments. It is undisputed that, during this argument, plaintiff called Watterson a "control freak," that plaintiff stated that Watterson could not do the "f***ing jobs" that plaintiff did at CGI, and that plaintiff stated that she would not sign the "f***ing thing" in reference to the memo Watterson prepared for the meeting. Watterson claims that, as the meeting was ending, plaintiff shouted "F*** you!" at her, but plaintiff denies saying these words. The meeting ended when Watterson suggested that both parties discuss these issues with Paul Mueller, the president of the company.

Plaintiff met with Mueller alone. Plaintiff told Mueller about the interpersonal problems she was having with Watterson and about the unfair treatment she believed she was receiving from Watterson. Plaintiff then stated that she should maybe look for another job if she could not get Mueller's support. Mueller told plaintiff that she should perhaps look for another job. Plaintiff went home, and later that afternoon, Mueller terminated plaintiff. Defendant's final personnel action summary concerning plaintiff states that plaintiff was asked to resign. Mueller later acknowledged that plaintiff was terminated because of (1) the deteriorating relationship between Watterson and plaintiff; (2) plaintiff's confrontation and insubordination to Watterson; (3) plaintiff's poor work performance; and (4) plaintiff's assertion that she believed that Liskow no longer supported her and that it would be difficult for her to work productively with Watterson without Liskow's or Mueller's support.

Plaintiff alleges gender discrimination in violation of Michigan's Civil Rights Act, MCL 37.2202(1); MSA 3.548(202)(1). Under this statutory section plaintiff complains that defendant is liable for treating her differently than her male co-workers. Plaintiff contends that this treatment led to her termination. In granting defendant's motion for summary disposition on this claim, the circuit court stated that plaintiff failed to show sufficient admissible evidence to permit a reasonable trier of fact to conclude that gender discrimination was a determining factor in her termination. We agree with the circuit court's conclusion.

We review decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Motions under MCR 2.116(C)(10) test the factual support of the plaintiff's claim. *Id.* The court considers the affidavits, pleadings, depositions, admissions and other evidence submitted to determine whether a genuine issue of any material fact exists to warrant a trial. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). Both this Court and the trial court must resolve all reasonable inferences in the nonmoving party's favor. *Id.*

In disparate treatment cases this Court applies the framework set forth in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973), and most recently articulated by our Supreme Court in *Lytle v Malady (On Rehearing)*, 458 Mich 153; 579 NW2d 906 (1998). This framework has three stages of proof. *Id.* at 172-177. The first stage requires that plaintiff establish a prima facie case of gender discrimination by proving by a preponderance of the evidence that she was (1) a member of a protected class; (2) subject to an adverse employment action; (3) qualified for the position; and (4) discharged under circumstances that give rise to an inference of unlawful discrimination. *Id.* at 172-173. With respect to the third and fourth factors of this first stage, defendant disputes whether plaintiff has provided sufficient evidence to establish a prima facie case. However, even assuming that plaintiff did establish a prima facie case, we conclude that plaintiff's disparate treatment claim nevertheless fails because plaintiff has not presented sufficient evidence to meet her burden at the third stage of proof, which requires that plaintiff show that defendant's proffered reasons for plaintiff's discharge were not true reasons, but instead were a mere pretext for gender discrimination. *Id.* at 174. Thus, without addressing the first stage of proof, we proceed to analyze the second and third stages.

The *Lytle* court described the second stage of proof as follows:

Once plaintiff has sufficiently established a prima facie case, a presumption of discrimination arises. The burden then shifts to the defendant to articulate a "legitimate, nondiscriminatory reason" for plaintiff's termination to overcome and dispose of this presumption. . . . At this stage, defendant "need not persuade the court that it was actually motivated by the proffered reasons. It is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff. To accomplish this, the defendant must clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection. The explanation provided must be legally sufficient to justify a judgment for the defendant. If the defendant carries this burden of production, the presumption raised by the prima facie case is rebutted, and the factual inquiry

proceeds to a new level of specificity.” [Id. at 173-174 (footnote omitted), quoting *Texas Dep’t of Community Affairs v Burdine*, 450 US 248, 254-255; 101 S Ct 1089; 67 L Ed 2d 207 (1981).]

In this case, defendant stated that plaintiff was terminated because of her poor work performance, her deteriorating relationship with Watterson, and her confrontation and insubordination to Watterson on her final day of work. We find that these are legitimate, nondiscriminatory reasons for plaintiff’s termination. Thus, having produced a legitimate, nondiscriminatory reason, defendant has raised a genuine issue of fact regarding whether it discriminated against plaintiff.

Because defendant has produced a legitimate, nondiscriminatory reason for plaintiff’s adverse employment action, we must proceed to the third stage of proof and undertake a final inquiry. The Court in *Lytle* also described this process, stating:

Once the defendant produces such evidence, even if later refuted or disbelieved, the presumption drops away, and the burden of proof shifts back to plaintiff. At this third stage of proof, . . . [plaintiff has] to show, by a preponderance of admissible direct or circumstantial evidence, that there was a triable issue that the employer’s proffered reasons were not true reasons, but were a mere pretext for discrimination.

[In cases where defendant has moved for summary disposition], disproof of an employer’s articulated reason for an adverse employment decision defeats summary disposition only if such disproof also raises a triable issue that discriminatory animus was a motivating factor underlying the employer’s adverse action. In other words, plaintiff must not merely raise a triable issue that the employer’s proffered reason was pretextual, but that it was a pretext for age or sex discrimination. Therefore, we find that, in the context of summary disposition, a plaintiff must prove discrimination with admissible evidence, either direct or circumstantial, sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer toward the plaintiff. [*Lytle, supra* at 174-176 (footnotes omitted).]

Plaintiff’s allegations of discrimination have been described above. However, plaintiff has failed to produce sufficient admissible evidence showing that defendant’s proffered reasons for her discharge are a mere pretext for gender discrimination. The admissible evidence in this case demonstrates only that plaintiff and Watterson did not have a good working relationship and that Watterson did not like plaintiff. There is insufficient evidence to raise a triable question that gender discrimination was a motivating factor in plaintiff’s termination. As a result, plaintiff fails to meet her burden on this third stage of proof.

For the above reasons, we hold that the circuit court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Jane E. Markey

/s/ William B. Murphy

/s/ Robert B. Burns